IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No.216 of 2003 with
FAO(MVA) No.272 of 2003.

Judgement reserved on: 13.7.2007

Date of decision: 20.8.2007.

1.FAO(MVA) No.216 of 2003

Mohan Lal & another **…….Appellants**

Vs.

H.R.T.C. & another **…. Respondents.**

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2. FAO No.272 of 2003

H.R.T.C. & another **……..Appellants**

Vs.

Mohan Lal & others **……Respondents**

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?' No.

For the Appellants : **Mr. Prem P. Chauhan, Advocate. In FAO(MVA) No.216 of 2003 and for respondents No.1 and 2 in FAO No.272 of 2003.**

For the Respondents : **Mr. H.S. Rawat, Advocate, for respondent No.1.**

Mr. Naveen Bhardwaj, vice Mr. J.R. Poswal, Advocate, for respondent No.2 in FAO No. 216/2003 and for respondent No.3 in FAO No.272/2003.

Mr. Raman Sethi, Advocate, for the appellant in FAO No.272/2003.

Kuldip Singh, Judge.

This judgment shall dispose of FAO(MVA) No.216 of 2003 and FAO No.272 of 2003, as both of them have arisen out of the common

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

award dated 15.3.2003 passed by learned Motor Accident Claims Tribunal (II), Shimla in M.A.C.C No.82-S/2 of 2001. FAO No.216/2003 has been filed by the petitioners for enhancement of the compensation and FAO No.272 of 2003 has been filed by Himachal Road Transport Corporation (for short 'corporation'), for setting aside the award. The parties are referred in the same manner as in the impugned award.

2. The facts in brief are that Sachin Chauhan aged about 18 years son of petitioners was travelling in bus No.HP-25-0738 on 2.2.2001 and the bus met with an accident near Gumma resulting in the death of Sachin Chauhan. The bus was owned by corporation and was being driven rashly and negligently by its driver. The deceased was earning Rs.5500/- per month. The petitioners claimed Rs.10,00,000/- compensation.

3. The petition was contested by respondent No.1 by filing reply, in which preliminary objection has been taken that the petition is bad for non-joinder of necessary parties i.e. Public Works Department of State of Himachal Pradesh. On merits the corporation has taken the plea that accident took place due to fall of huge debris on the road from another new road under construction which was being constructed by Public Works Department of State of H.P. It has been submitted that Rs.10,000/- was paid to the petitioners on the spot by the corporation at the time of the accident. The driver has also filed separate reply in which he has denied that he was negligent in driving the bus at the time of accident.

4. The learned Tribunal has held that accident took place due to rash and negligent driving by the driver of the bus and awarded

Rs.2,70,000/- compensation to the petitioners, the petitioners and the corporation have filed the above appeals as noticed above.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. In FAO No.216 of 2003, the petitioners have submitted that it has been proved on record that the deceased was earning Rs.5500/- per month and keeping in view the age of the deceased as well as of the petitioners they have been awarded less compensation. They are entitled to compensation as claimed by them in the petition. The learned counsel for the corporation in FAO No.272 of 2003 has submitted that the deceased was youngman of about 18 years of age. In normal course he was to be married shortly, therefore, parents are not entitled to more than 1/3rd of the total compensation. The Tribunal has applied multiplier on higher side keeping in view the age of the claimants and has thus awarded excess compensation. He has also submitted that accident did not take place due to the negligence of the bus driver.

7. FAO(MVA) No.273 of 2003, Himachal Road Transport Corporation vs. Saroj decided on 11.6.2007 had also arisen out of the same accident. In FAO(MVA) No.273 of 2003, this Court has already held the liability of the corporation to pay the compensation. Therefore, liability of the corporation to pay the compensation on account of death of Sachin Chauhan in accident involving bus No.HP-25-0738 does not require elaborate discussion. In these circumstances the findings of the Tribunal that corporation and driver of the bus shall pay the compensation are upheld.

8. PW-1 HC Subash Chand No.176, P.S. Kotkhai, has proved FIR Ex.PW-1/A of the accident. PW-3 Mohan Lal, petitioner No.1 has deposed that Sachin Chauhan aged 18 years was his son and his date of birth was 4.9.1982. He died in accident on 2.2.2001 involving bus No.HP-25-0738. He was working as clerk in a shop and was getting Rs.4500/- salary per month which the deceased used to pay to him. He has admitted that after the accident the corporation has paid Rs.10,000/- to him. PW-4 Smt. Kaushlya has stated that her son Sachin Chauhan was working in a shop and he used to pay his salary to his father. PW-5 Het Ram Chauhan is the owner of shop Maha Laxmi General Store. He has stated that Sachin Chauhan used to work with him and he was paying Rs.5500/- salary per month to him. He has stated that he was paying Rs.5500/- per month because the deceased was looking after his entire work and he had learnt everything . He has proved salary certificate Ex.PW-5/A.

9. Rachhpal Singh appeared as RW-1 and has deposed that he was driving bus No.HP-25-0738 at the time of the accident. The accident had taken place because of debris lying on the road due to the negligence of the Public Works Department. He was not driving the bus in rash and negligent manner at the time of the accident.

10. Learned counsel for the petitioners has submitted that as against proved salary Rs.5500/- per month, vide Ex.PW-5/A, the Tribunal has assessed the salary of the deceased Rs.1500/- to Rs.2000/- per month but actually took income Rs.1500/- per month of the deceased while assessing the compensation. The Tribunal has taken Rs.1500/- per month salary of the deceased without any basis.

The respondents have placed nothing on record to disbelieve the statement of PW-5 and salary certificate Ex.PW-5/A issued by him showing the salary of deceased Rs.5500/- per month. RW-1 Rachhpal Singh in his statement has not rebutted the income proved by the petitioners. The corporation has not led any evidence to counter the evidence of the petitioners regarding income of the deceased.

11. The learned counsel for the corporation has submitted that the petitioners are not entitled to more than 1/3rd total amount of compensation. The multiplier of 15 applied by the Tribunal is on the higher side. PW-3 Mohan Lal has deposed that from the salary of deceased he used to incur house hold expenses. The mother of the deceased, however, stated that they used to run their expenses from the income of the deceased as well as from their orchard. The respondents have placed nothing on record that how much income the petitioners had from other sources.

12. In **CWP No.541 of 2005, titled New India Assurance Company Ltd. Vs. Prem Chand & Ors**., decided on 17.5.2007, this Court has held that normal rule is that the dependency of the parents should not be taken at more than 1/3rd of the income. However, this is not a cast iron proposition of law. Each case has to be decided on its own facts. There may be cases where the parents are not earning at all when the dependency may be assessed by the Tribunal at more than 1/3rd by giving reasons. In the present case there is nothing on record to show income of the petitioners from other sources. In these circumstances, the petitioners, if not wholly then at least substantially were dependant on the deceased.

13. PW-3 Mohan Lal in his statement has stated that his son was paying Rs.4500/- to him which was being paid by his employer. PW-5 Het Ram employer of deceased Sachin Chauhan has stated that he was paying Rs.5500/- per month salary to the deceased. Sachin Chauhan was paying Rs.4500/- to his father Mohan Lal, therefore, Mohan Lal Chauhan has stated that employer of the deceased used to pay Rs.4500/- per month which the deceased used to pay to him. In normal course deceased Sachin Chauhan must be retaining Rs.1000/- from the salary for his own expenses.

14. There is nothing on record how much the petitioners were earning from other sources. In these circumstances in my opinion the dependency of the parents should be taken Rs.2000/- per month keeping in view of the total income of the deceased. The deceased was 18 years, petitioner No.1, 45 years and petitioner No.2, 43 years of age at the time of accident. The Tribunal has applied multiplier of 15 for assessing the compensation. The deceased died at the age of 18 years and in normal course he was to be married shortly. Therefore, keeping in view the age of the deceased and the petitioners, in my opinion multiplier of 10 is appropriate multiplier in the present case. The petitioners are thus entitled to Rs.2000 x 12 x 10 = 2,40,000/- compensation. In addition to this the petitioners are entitled to Rs.20,000/- on account of conventional damages for loss of love and affection and Rs.5000/- on account of funeral expenses. The petitioners are thus entitled to total amount of Rs.2,65,000/- compensation. The petitioners have already been paid Rs.10,000/- by the corporation on account of death of Sachin Chauhan. Therefore,

amount of Rs.10,000/- is to be excluded from the compensation assessed above. The petitioners are thus entitled to Rs.2,55,000/- compensation along with 9% per annum interest from the date of filing of petition i.e. 21.4.2001 till deposit/payment.

15. The result of the above discussion is FAO (MVA) No.216 of 2003 is dismissed and FAO (MVA) 272 of 2003 is partly allowed. The award dated 15.3.2003 passed by learned Motor Accident Claims Tribunal (II) Shimla in M.A.C.C. No. 82-S/2 of 2001 is modified, an award of Rs.2,55,000/- is passed in favour of claimants/petitioners and against respondents jointly and severally along with interest at the rate of 9% per annum from the date of petition, i.e. 21.4.2001 till deposit/payment. The award amount is inclusive of amount, if any, paid/determined under Section 140 of the Act. The award amount along with interest shall be apportioned in the ratio of 40% and 60% between petitioners No.1, 2. No costs.

(Kuldip Singh)
Judge.

August 20,2007
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